The Trump Administration *really, really* doesn't want the *Juliana v. United States* case, a.k.a. the "atmospheric trust litigation," to go to trial.

But despite the persistent efforts of President Trump's Justice Department to have the *Juliana* case dismissed, it now appears that the most important currently-pending climate change case in the nation will indeed go to trial before a federal district judge in Oregon this October.

I profiled the *Juliana* case on this site in some detail back in 2015 when the litigation was first filed, and offered further commentary on the litigation last year, when the case was briefly before the U.S. Court of Appeals for the Ninth Circuit. To summarize, three years ago 21 children from around the United States–acting under the auspices of the non-profit organization Our Children's Trust–filed suit against the United States in U.S. District Court for the District of Oregon. They contend that the federal government has violated the children's legal rights by failing to take far more dramatic steps to reduce the nation's greenhouse gas emissions and address urgent climate change concerns.

Lead Plaintiff Kelsey Juliana speaks on the steps of the Supreme Court

Specifically, the young plaintiffs allege that by continuing longstanding policies and practices of promoting fossil fuels, the federal government is violated their constitutional rights of due process, equal protection and unenumerated rights protected under the Ninth Amendment. Plaintiffs' final legal theory is perhaps the most intriguing: that under the public trust doctrine, the government has an affirmative duty to current and future generations to refrain from substantially impairing the earth's atmosphere.

The plaintiffs' decision to file their innovative federal lawsuit in Oregon is tied to their

dissatisfaction with a particular energy project approved by the government: a new liquified natural gas terminal proposed to be sited on the Central Oregon coast. The children seek a sweeping federal court order directing the federal government "to swiftly phase-down CO2 emissions aimed at atmospheric CO2 concentrations that are no more than 350 [parts per million] by 2100, develop a national plan to restore Earth's energy balance, and implement that national plan so as to stabilize the climate system."

Assigned U.S. District Judge Ann Aiken denied the government's motion to dismiss the case in 2016, stating in her decision that she has "no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society." She has scheduled the case to go to trial on October 29th of this year.

Almost from the time President Trump took office in early 2017, his Administration has taken extraordinary steps to have the *Juliana* case dismissed by federal appellate courts. (Normally, appellate courts require a case to play out at the district court level before becoming involved.) In June of 2017, the Trump Administration filed a petition with the Ninth Circuit asking that court to immediately review and reverse Judge Aiken's refusal to dismiss the case, and to halt all district court proceedings in the meantime. Demonstrating the priority the Justice Department has given the *Juliana* case, Eric Grant, the second highest ranking attorney in DOJ's Environment and Natural Resources Division, journeyed to Oregon to personally argue the case.

The efforts of the Justice Department proved unavailing: in May 2018 the Ninth Circuit issued a unanimous decision rejecting the Trump Administration's efforts to terminate the *Juliana* litigation. The Court of Appeals instead remanded the case to the district court for pretrial and trial proceedings.

The Trump Administration, however, was undeterred: after the district court denied the government's effort to halt discovery (the court-supervised exchange of information between the parties), the Justice Department returned to the Ninth Circuit seeking to have the *Juliana* case dismissed or, alternatively, to halt further discovery and related pretrial proceedings in the district court.

The Ninth Circuit was neither convinced nor, apparently, amused: on July 20th the Court of Appeals again unanimously rejected the government's efforts to terminate the case or halt the scheduled trial, this time in a short and pointed decision.

Remarkably, the Trump Justice Department pressed on. It immediately sought review by the U.S. Supreme Court, again seeking dismissal or suspension of the case. Yesterday, the

Supreme Court responded, rejecting the government's arguments and agreeing in a cryptic order with the district court and Ninth Circuit that the *Juliana* case should be allowed to proceed without intervention by the federal appellate courts.

The Supreme Court's brief order does, however, contain an admonition that is likely to provide some consolation to the United States and, correspondingly, concern to the *Juliana* plaintiffs and their attorneys. The Court cautioned:

> "The breadth of [plaintiffs'] claims is striking…and the justiciability of those claims presents substantial grounds for difference of opinion. The District Court should take these concerns into account in assessing the burdens of discovery and trial, as well as the desirability of a prompt ruling on the Government's dispositive motions."

Legal observers–including this commentator–have similarly noted the formidable challenge the *Juliana* plaintiffs have in proving their constitutional and public trust claims, and convincing the federal district court judge that she can feasibly fashion a viable set of remedies to address their grievances. Nevertheless, Judge Aiken seems determined to allow the plaintiffs to make their case at trial later this year.

In his November 2017 oral argument to the Ninth Circuit judges on behalf of the government, Deputy Assistant Attorney General Grant repeatedly argued that to allow the *Juliana* case to proceed would result in "the trial of the century."

He's absolutely right.

(To date, it appears that only one climate change case has gone to trial in the United States–*Green Mountain Chrysler Plymouth v. Crombie*, in which a federal district judge in Vermont rejected the automobile industry's challenge to greenhouse gas emission standards for motor vehicles originally developed by California's Air Resources Board and adopted by the State of Vermont as permitted under the Clean Air Act.)

As significant as the *Crombie* trial and decision were, the scheduled *Juliana* trial has the potential to be even more so–and riveting judicial theater to boot. For one thing, the plaintiffs have reportedly assembled a formidable group of expert witnesses, led by the renown, former NASA climate scientist James Hansen. And it will be fascinating to see how the Justice Department decides to defend the *Juliana* case at trial: will it parrot the Trump Administration's longstanding skepticism and hostility toward climate science (even to the

point of denying the challenge of climate change altogether)? Or will the government expressly or implicitly concede the reality of climate change and simply seek to avoid responsibility for addressing the environmental crisis of our time?

The upcoming *Juliana* trial–assuming it goes forward–indeed promises to be the climate change trial of the century. Beginning on October 29th, national media and public attention will understandably focus on the federal district courthouse in Eugene, Oregon. Given the broad interest in the trial, Judge Aiken and her staff will hopefully arrange for the proceedings to be live-streamed over the Internet. Folks interested in ensuring that result may wish to contact Judge Aiken’s staff, at telephone number (541) 431-4102.

Juliana v. United States–the climate change “trial of the century” indeed.

Chief Judge Ann Aiken, US District Court for Oregon